



PLANNING COMMISSION

Department of Urban Planning & Design P.O. Box 27210 Tucson, Arizona 85726-7210

Approved by Planning Commission
on August 20, 2008.

Date of Meeting: June 4, 2008

The meeting of the City of Tucson Planning Commission was called to order by Catherine Applegate Rex, Chair, on Wednesday, June 4, 2008, at 7:04 p.m., in the Mayor and Council Chambers, City Hall, 255 W. Alameda Street, Tucson, Arizona. Those present and absent were:

1. ROLL CALL

Present:

Catherine Applegate Rex, Chair
Eric R. Cheney
Joseph Maher, Jr.
Shannon McBride-Olson
Daniel R. Patterson
William Podolsky
Sean Sullivan
James E. Watson
Daniel J. Williams
Craig Wissler

Member at Large, Ward 5
Member at Large, Ward 2
Member at Large, Ward 6
Member, Ward 2
Member, Ward 5
Member at Large, Ward 4
Member at Large, Ward 3
Member, Ward 4
Member, Ward 1
Member, Ward 3

Absent:

Brad Holland, Vice Chair
Rick Lavaty
Robert Patrick

Member, Ward 6
Member at Large, Ward 1
Member, Mayor's Office

Staff Members Present:

Albert Elias, Urban Planning and Design, Director
Jessie Sanders, Development Services, Deputy Director
Deborah Rainone, Assistant City Clerk
Jim Mazzocco, Urban Planning and Design, Planning Administrator
Dennis McLaughlin, Principal Assistant City Attorney
Viola Romero-Wright, Principal Assistant City Attorney
Linus Kafka, Principal Assistant City Attorney
Glenn Moyer, Development Services Administrator
Pete Palomarez, Transportation IT Specialist
Norma Stevens, Urban Planning and Design, Secretary
Yolanda Lozano, City Clerk's Office, Recording Secretary

2. MINUTES FOR APPROVAL: April 2, 2008

It was moved by Commissioner Sullivan, duly seconded, and passed by a voice vote of 10 to 0 (Commissioners Lavaty, Patrick, and Vice Chair Holland absent), to approve the minutes of April 2, 2008, with the following corrections: page 6, third paragraph, fourth line, change the word ~~binds~~ to under mines, page 18, last paragraph, second line, change the word ~~attracted~~ to tracked, and page 19, fourth paragraph, clarify the last sentence – it should read: She asked if the latter ~~that~~ was anticipated.

3. OPEN MEETING LAW (INFORMATION ITEM)

Deborah Rainone, Assistant City Clerk, gave an update and presentation on the Open Meeting Law and how it applied to the Commission. She said the Open Meeting Law was a State law that required all public bodies to conduct their meetings openly and only after a meeting notice had been posted a minimum of twenty-fours prior to the meeting. She said anyone could come in and listen to the proceedings of the meetings. She said the Open Meeting Law applied to all commission members, public officers, public bodies, all Board and Commission members, Subcommittee members, advisory members, quasi-judicial members, and the Mayor and Council. She stated Arizona had one of the strictest Open Meeting Laws regulated by the Attorney General's Office. She said if ever someone is held in violation of the law, members were personally liable and would have to pay a five hundred dollar fine and be removed as an officer of the commission.

Components of the Open Meeting Law:

- a. Agenda – must be posted twenty four hours prior to the meeting and have the date, start time, and exact location (place, street address and room number if applicable) of the meeting. The agenda should also be specific.
- b. Meeting Notice (Agenda) – once prepared, they are sent to the City Clerk's Office for processing and posting for public review. There are four locations at City Hall where the notices are posted and they are also posted to the website for Boards and Commissions.
- c. Quorum – a majority of the authorized membership. The authorized membership, thirteen, was determined when the Commission was created and done by ordinance or resolution. A quorum would be seven, which is fifty one percent. Different scenarios were reviewed if only seven members were present and what the chair person would need to do in the case the quorum fell below seven members.
- d. Legal Action Report – must be posted to the City's website by the end of the third day after the meeting. The Legal Action Report should show briefly all action taken by the Commission.
- e. Minutes – all public bodies must have minutes of their meetings showing all members present/absent to include members late or departing early, any description of the matters considered, anyone making a presentation and legal actions. Approved minutes are also posted to the website within two working days after the meeting at which they were approved.

- f. Voting – the general rule is someone makes a motion, it is seconded, there is discussion and then a vote is taken. Voice votes or a roll call vote can be used. If there is a voice vote and someone is opposed, then a roll call vote should be used to clarify the voting.
- g. Abstaining from Voting – basically, this means that you are passing on a vote. Mayor and Council Rules and Regulations are followed as far as voting and parliamentary procedures. If someone abstains, a roll call would be taken. Before the chair votes, the secretary must go back to the person who abstained a second time to give them a chance to vote. If the person abstains a second time, their vote is counted as a “yes” vote. Ms. Rainone explained that when someone is appointed to serve on a Commission or Committee, they are expected to make decisions and have a voice. Abstaining could give the impression that one does not care either way.
- h. Communicating outside of meetings – talking with each other outside of meetings via e-mails, telephone conversations, and meeting for lunch, on topics normally discussed at meetings should not be done as it could inadvertently create a meeting and violate the Open Meeting Law. If you have information or questions that you would like to go to the other Commission members, send it to the support staff assigned to the Commission and they can act as the spoke and wheel and send it to everyone at the same time.
- i. Placing Items on the Agenda – if it is between meetings, the general rule is that the Chair can put any item on the agenda; members of the Committee may ask the Chair to put items on the agenda, or ask City staff to ask the Chair to put items on the agenda. During a meeting, you may ask the Chair to place items on the agenda or a motion can be made and seconded. The general public or audience cannot put items on the agenda.

Dennis McLaughlin, Principal City Attorney, also spoke regarding the Open Meeting Law. He reiterated what Ms. Rainone presented to the Commission. He stated he wanted to add to what Ms. Rainone said about a quorum. He gave an example that happened with another committee where a presentation was scheduled. The presenters were from Phoenix, but at the time of the meeting there was no quorum. He said the Chair could not bear not having the meeting so the Chair called it an informational meeting, or an informal meeting or a briefing. He said there was no such thing, it was either a meeting or it was not. He asked the Commission to resist the temptation because it was illegal to do it. He also commented on e-mails. He said there was an Attorney General’s Opinion that a meeting could be created through emails. He said there was no daisy chaining, A to B, B to C, C to D, no spoke and wheel, A to B, A to C, A to D, and no consensus building. He said none of it was legal.

Chair Rex asked about conflict of interest and how someone would recuse them from voting.

Mr. McLaughlin stated he was not sure how broadly the Commission wanted him to go into conflict of interest. He said it was a statutorily defined situation where there was substantial interest by a Commissioner which was a pecuniary or propriety interest that was not remote in a decision that the Board would make. He said the statute also

defined remote interest. If the decision benefited a Commissioner specifically, then there was definitely a conflict of interest. If there was a class of people that would benefit (a business of a certain type) and there were more than ten in the class, that was considered to be remote interest because otherwise there would be constant conflicts of interest. He said if someone had something specific to them, and thought about it in both ways, specific to them and something that would benefit a class (a group of people they were in), that is less than ten people, and then he/she would need to declare a conflict, not vote, and not participate. He said that was different than abstaining. In declaring a conflict, that person would not have any part in the decision and would go into the audience. He said they could participate as part of the audience, but not in the decision of that particular item as part of the Board.

Commissioner Cheney asked what would happen if someone had a conflict of interest and there were only enough members present for a quorum.

Mr. McLaughlin stated, if only a quorum was present, and someone recused themselves from a particular item because of a conflict of interest and the quorum was lost, the meeting would have to be adjourned by the Chair or, if there are other items on the agenda, move to the next item.

4. AUTHORITY AND RESPONSIBILITIES (INFORMATION ITEM)

Linus Kafka, Principal City Attorney, gave a PowerPoint presentation on Authority and Responsibilities of the Commission. He reviewed the State statute, City Charter, and City Land Use Code. The different areas of discussion were:

- a. Authority
- b. Responsibilities
- c. Duties
- d. Skills
- e. Commission/Staff Relationship
- f. Commission/Council Relationship
- g. Commission/Attorney Relationship
- h. Composition of Commission
- i. Administrative Functions (A Who's Who)
- j. General Legislative Procedures (A What's What)
- k. Planning Commission Legislative Procedures
- l. Meeting Procedures
- m. Public Hearings
- n. Executive Session
- o. The Motion
- p. Making a Motion
- q. Call to the Audience
- r. Recommendations

5. DSD's PERMIT ACTIVITY ONLINE INITIATIVE (INFORMATION ITEM)

Jessie Sanders, Development Services Department (DSD), Deputy Director, gave a presentation regarding DSD's Permit Activity Online Initiative and how it works.

Mr. Sanders stated that DSD has had various permitting activities on their website for the past six or seven years. During the past six months, they have aggregated a lot of the information and in some ways is a low tech solution that provides a great deal of information. He gave a demonstration of how the Property Research Online (PRO) system worked and where it was located on the City's website (www.tucsonaz.gov/pro).

6. CERTIFICATE OF OCCUPANCY DISCLOSURE ORDINANCE (INFORMATION ITEM)

Jessie Sanders, Development Services Department (DSD), Deputy Director, gave a PowerPoint presentation regarding the Certificate of Occupancy (CofO) Disclosure Ordinance. He discussed the what, why, stakeholder meetings, four (or five) legs of a broader solution and where the City currently was.

Purpose for the Ordinance:

- To disclose to the lessee related to the need to contact the Development Services Department to obtain information on the requirements for the lessee's intended use prior to execution of a lease agreement.

Accomplishments:

Prior to signing the lease, the Lessee is given the opportunity to:

- Determine if the use is allowed in the Zoning.
- Discover what requirements there may be in order to obtain a CofO:
 - a. resolve work done without permits
 - b. change of use requirements, if any
- Set lessee up for success

What is Cof O for?

- Indicates building is safe for occupancy
- Specifies how many people may occupy the space
- Permanent CofO certifies that the space meets all applicable codes
 - a. including LUC
 - b. Note: a CofO does not require that the building be upgraded to meet all current codes

Why

- Finance has adopted a provision of the Model Cities Tax Code that requires a CofO to issue a Business License
- Fire Department is applying for a national certification which results in more inspection of businesses – they always ask to see a CofO
- Neighborhood Resources asks for a CofO when responding to a complaint
- Tenants not having a valid CofO are then put in a precarious position

CofO Stakeholders

- 56 active participants
- Representatives from:
 - a. Small Building Owners
 - b. Commercial Real Estate Brokers
 - c. Building Owners and Managers Association (BOMA), Metropolitan Chamber of Commerce, Pima Metro Alliance
- Architects
- City Departments:
 - a. Fire
 - b. Neighborhood Resources
 - c. Finance (Business Licenses)
 - d. Urban Planning
 - e. City Attorney

Broader Solution

- CofO Disclosure
- Baseline Drawings, Depictions, Description
 - a. Floor
 - b. Site
- Provision CofO
 - a. “Path to Compliance”
 - b. Punch List
 - c. Schedule for Completion
- Adaptive ReUse Changes to the Land Use Code (LUC)
 - a. Find a way to give life to older buildings
- Adequate Staffing

Current Status

- Real Estate Brokers & Building Owners Not in Support
 - a. Want certainty of CofO
 - 1. Parking regulations and non-conforming rules
 - 2. Not enough staff to process applications in a timely manner
 - b. Afraid of “Unanticipated Consequences”
 - c. Expressing years of anger and frustration over the effects of LUC on older non-compliant buildings
- LUC – Adaptive ReUse – Other Cities

7. UPDATE ON CLARION ASSOCIATES LAND USE CODE DIAGNOSTIC REPORT (INFORMATION ITEM)

Jim Mazzocco, Urban Planning and Design, Planning Administrator, gave an update. He said that in July 2007, the Urban Planning Department (UPD) asked Clarion Associates, a professional zoning company that prepares zoning codes around the nation, to prepare a diagnostic report on the City’s Land Use Code (LUC) and all the other development code documents that people deal with in the development review process. This includes a document called Document Standards, the LUC, 23A (which is for public notice and public participation) and the design manual, which is an in-house document

that had not been adopted by the Mayor and Council, but staff uses it in certain types of review. He said that Clarion Associates had been looking at all the documents but had not given the City their final review. Their task was to prepare the diagnostic of the LUC, make recommendations or reorganization or simplification of the LUC, and give the City an outline of how a new LUC would look.

Mr. Mazzocco stated staff anticipated receiving a report the latter part of June, review and discuss it with Clarion Associates for possible changes, and hopefully by August have it available for review by the Mayor and Council.

Mr. Mazzocco discussed what the City was looking for in the reorganization of the LUC:

- a. Administrative Manual – would include application procedures, plant lists, development fees
- b. Technical Engineering Manual – would include street standards, sewage detention standards and anything of an engineering idea.
- c. User's Guide

Mr. Mazzocco stated that once the report was received, it would be shared with the Commission and public hearings would be held.

Commissioner Williams asked if staff had received direction from the Mayor and Council to reorganize the LUC.

Albert Elias, Urban Planning and Design, Director, stated staff had received direction from the Mayor and Council specifically for the diagnostic and these were recommendations as a result of that. He said it was up to the Mayor and Council to decide whether they liked them or not. He said that Clarion Associates felt the City had one of the most convoluted set of regulations of any community with whom they had worked with.

8. OTHER BUSINESS

a. Mayor and Council Update

Albert Elias, Urban Planning and Design, Director, stated the Neighborhood Preservation Zone would be presented to the Mayor and Council on June 10, 2008, and the Miramonte Neighborhood Plan on June 17, 2008.

b. Other Planning Commission Items (Future agenda items for discussion/assignments)

Commissioner Williams stated he would like to see Commissioner Robert Patrick receive a Copper letter for his work and service on the Planning Commission over the past eight years.

c. Update on Water and Wastewater Study Oversight Committee by Planning Commission Members

Commissioner Watson stated the Committee had met six times and their task was to ensure that the process had public input, that it is inclusive not exclusive and to take inventory of existing resources in the community. He invited his fellow Commissioners to attend the meetings and give their input.

Commissioner Sullivan reported that the website for the study was www.tucsonpimawaterstudy.com. He said information on public comments, meetings, and audio could be found on the website. He said the Committee recently submitted a progress report to the Mayor and Council and Board of Supervisors which outlined the outreach plan for Phase I and how the Committee would proceed with further recommendations for the outreach of Phase II, which were community policies and values.

9. CALL TO THE AUDIENCE

Michael Toney spoke briefly regarding his thoughts on the Certificate of Occupancy and Land Use Code reorganization.

10. ADJOURNMENT: 9:18 p.m.